

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ABRAHAM GONZALEZ VELASQUEZ,
Petitioner.

No. 2 CA-CR 2015-0400-PR
Filed February 3, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County

No. CR20131378001

The Honorable Richard S. Fields, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Law Office of Thomas E. Higgins, P.L.L.C., Tucson

By Thomas E. Higgins

Counsel for Petitioner

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

VÁ S Q U E Z, Presiding Judge:

¶1 Abraham Velasquez seeks review of the trial court's order summarily dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Velasquez has not met his burden of demonstrating such abuse here.

¶2 Velasquez pled guilty to transportation of marijuana for sale. The trial court sentenced him to a five-year prison term on February 26, 2014. On May 27, Velasquez filed a motion seeking an extension "to file [a] memorandum in support of [a] Rule 32 petition." The court did not address that motion. On June 27, Velasquez filed a "Notice of Post-Conviction Relief Nunc Pro Tunc" and, in May 2015 filed a memorandum claiming the trial court had imposed a sentence not authorized by law because it erred by finding as an aggravating factor that he committed the offense for pecuniary gain. The court, concluding the factor was appropriate, summarily denied relief and dismissed the proceeding. This petition for review followed.

¶3 On review, Velasquez repeats the claim made below. We need not address this issue because his notice was untimely, having been filed more than ninety days after his sentencing, and his claim that his sentencing was improper cannot be raised in an untimely proceeding. Ariz. R. Crim. P. 32.1(c); 32.4(a). Even assuming a trial court has discretion to grant an extension of time to file a notice of post-conviction relief, the court did not grant—or even address—Velasquez's motion here. *See* A.R.S. § 13-4234(G)

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(Rule 32 “time limits are jurisdictional, and an untimely filed notice or petition shall be dismissed with prejudice”).

¶4 We grant review but deny relief.